STATE OF MICHIGAN

COURT OF APPEALS

SAHABI CONVENIENCE STORE, INC., d/b/a CACTUS LOUNGE, Plaintiff-Appellant, v STATE NATIONAL INSURANCE COMPANY, INC., and RCA INSURANCE GROUP, Defendants-Appellees.	UNPUBLISHED September 15, 2011 No. 298849 Wayne Circuit Court LC No. 09-005772-CK

Before: M. J. KELLY, P.J., and OWENS and BORRELLO, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendants' motion for summary disposition under MCR 2.116(C)(10) in this action for breach of an insurance policy. The trial court agreed with defendants that the policy was void ab initio because plaintiff's principal, Houssein Sahabi, made material misrepresentations in the insurance application. Because we conclude that there were no errors warranting relief, we affirm.

Although defendants insured plaintiff under a commercial insurance policy, they refused to provide coverage for an incident that occurred in July 2007, a theft loss that occurred in December 2007, and a fire loss that occurred in January 2008. Plaintiff then sued defendants for breach of contract, specific performance and declaration of rights, and violation of the Uniform Trade Practices Act, see MCL 500.2001 *et seq*. Defendants moved for summary disposition under MCR 2.116(C)(10), asserting that the commercial property coverage portion of the policy was void ab initio because Sahabi—plaintiff's sole shareholder—made material misrepresentations in the application for insurance. The trial court agreed and entered an order dismissing plaintiff's claims.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

An insured may void an insurance policy by making material misrepresentations to the insurer. See MCL 500.2833(1)(c);[1] see also *Keys v Pace*, 358 Mich 74, 82-83; 99 NW2d 547 (1959) (noting that, under principles generally applicable to insurance contracts, an insurer may avoid a policy if the insured misrepresented a material fact in procuring the insurance). Here, the policy provided that the coverage would be "void in any case of fraud by you as it relates to this Coverage Part at any time. It is also void if you or any other insured, at any time, intentionally conceal or misrepresent a material fact concerning: . . . The Covered Property."

Plaintiff does not dispute that the application for insurance contained material misrepresentations. Plaintiff argues that there is a genuine issue of material fact as to whether Sahabi *intentionally* misrepresented the facts in the insurance application.[2] Relying on Sahabi's affidavit in which he averred that he provided accurate information to the insurance agent who completed the application form, plaintiff argues that the misrepresentations should be attributed to the agent rather than Sahabi. Plaintiff further contends that Sahabi's "inadequate grasp of the English language" may have caused the inaccuracies in the application.

Misrepresentations made in an insurance application that is completed by an insurance agent and signed by the insured are generally attributable to the insured. In *Montgomery v Fidelity & Guaranty Life Ins Co*, 269 Mich App 126; 713 NW2d 801 (2005), this Court considered and rejected an argument similar to plaintiff's in the context of a life insurance policy. The application for life insurance for the plaintiff's husband indicated that he had not used tobacco products within the previous five years even though he actually had a "significant smoking habit." *Id*. at 127. After the plaintiff's husband was killed in an automobile accident, the insurer discovered he had been a smoker and denied the plaintiff's claim for death benefits. *Id.* at 128. The plaintiff asserted that the agent completed the application and that neither she nor her husband read it before signing it. *Id.* at 129. But this Court rejected the notion that an insured cannot be held responsible for the representations made in the application that the insured signed:

> Whether it was plaintiff, the decedent, or the agent who misrepresented the decedent's tobacco use on the application is not material because plaintiff and the decedent signed the authorization, stating that they had read the questions and answers in the application and that the information provided was complete, true, and correctly recorded. It is well-established that failure to read an agreement is not a valid defense to enforcement of a contract. A contracting party has a duty to examine a contract and know what the party has signed, and the other contracting

[1] The parties do not dispute the applicability of this statute.

[2] In the context of policies for no-fault insurance, this Court has held that a policy may be rescinded even if the misrepresentations were not made intentionally. See *Lash v Allstate Ins Co*, 210 Mich App 98, 103; 532 NW2d 869 (1995).

> party cannot be made to suffer for neglect of that duty. Regardless of who actually completed the application, plaintiff and decedent both signed the authorization, attesting to the completeness and truth of the answers, after the application was completed. Thus, plaintiff and the decedent had the opportunity to review the application and correct any errors before submitting it. We therefore conclude that there was no genuine issue of material fact that the decedent made a material misrepresentation on the application, entitling defendant to rescind or avoid the policy. [*Id*. at 129-130 (citations omitted).]

See also *Clark v John Hancock Mut Life Ins Co*, 180 Mich App 695, 697-698; 447 NW2d 783 (1989).

In this case, although Sahabi averred that he "provided accurate information" to the agent, he did not state that the agent recorded answers that were contrary to his instructions. But regardless of whether the insurance application was correctly completed by the agent, Sahabi signed the application and he had a duty to read it before signing it. Plaintiff did not submit any evidence that Sahabi was not afforded an opportunity to review the application to correct any errors before signing it. Further, by signing the application, Sahabi represented that "the information . . . is true and correct, and it is hereby understood that the policy will be warranted based on the information."

Plaintiff argues that there was no evidence that Sahabi could read and understand the application he signed. Although plaintiff's brief suggests a language barrier and notes that a Farsi-speaking interpreter was present to assist Sahabi if necessary when he was examined under oath, Sahabi's affidavit does not state that he could not read English or even that he misinterpreted the questions in the application. It was incumbent upon plaintiff to present factual support for any claim that Sahabi could not read English or misinterpreted any questions in the insurance application. See *Smith v Globe Life Ins Co*, 460 Mich 446, 455-456 n 2; 597 NW2d 28 (1999) (stating that it is insufficient for a party to show that a record "might be developed" that will leave open an issue for trial; rather, the party must present evidentiary proofs showing that there is a genuine issue of material fact for trial). At the time of his examination under oath in 2008, Sahabi had lived in the United States for approximately 32 years. He was plaintiff's sole shareholder and had operated the Cactus Lounge for approximately 17 years. The mere presence of an interpreter for assistance does not show that this long-time resident, citizen, and veteran businessman was incapable of reading English. Plaintiff failed to establish a genuine issue of material fact with respect to whether Sahabi was incapable of understanding the information in the insurance application.

Plaintiff does not dispute that the application that Sahabi signed contained material misrepresentations. And, absent evidence that it cannot be bound by those representations, the trial court did not err in granting defendants' motion.

Affirmed.

/s/ Michael J. Kelly
/s/ /Donald S. Owens
/s/ Stephen L. Borrello